SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 92-305

IN THE MATTER OF :
JOHN P. YETMAN, JR. :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: October 21, 1992

Decided: December 3, 1992

Thomas J. McCormick appeared on behalf of the Office of Attorney Ethics.

Jack S. Sitzler and Mark W. Catanzaro appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before the Board based upon a recommendation for public discipline filed by a Special Master. Respondent was admitted to the practice of law in New Jersey in 1976 and maintains an office in Mount Holly, Burlington County.

The facts of the matters considered by the Special Master are as follows:

The Dring Matter

On or about November 29, 1982, Rodney and Lynda Dring retained respondent to represent them in a wrongful death action. The Drings' son, Michael, had been struck by two automobiles and killed on October 31, 1982.

Respondent wrote to Mrs. Dring on February 11, 1983, informing her that a complaint had been filed. This was not true, as the complaint was not filed until March 19, 1983. Thereafter, respondent failed to make service on the defendants. As a result, on or about September 16, 1983, the complaint was dismissed for lack of prosecution. Respondent eventually accomplished service and the complaint was reinstated on January 27, 1984.

Thereafter, respondent failed to provide answers to interrogatories and the complaint was dismissed against two of the defendants. Rather than file a motion to have the complaint reinstated, respondent filed a new complaint on October 29, 1984, just prior to the running of the statute of limitations. Again, respondent failed to serve the defendants and a notice of motion to dismiss was issued by the clerk of the court on March 26, 1985. Respondent made service and the motion was withdrawn.

Once again, respondent failed to submit answers to interrogatories. Upon a motion by one of the defendants, the complaint was dismissed on October 29, 1985. Respondent never had the complaint reinstated and the statute of limitations expired.

In November 1987, the Drings hired another attorney to represent them in that matter. It was then that they learned about the second complaint and that both complaints had been dismissed. A subsequent malpractice action by the Drings against respondent led to a recovery against respondent's malpractice carrier for $100,000, the full amount available.[1]

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[1] Respondent paid $4,000 of that amount.

Prior to terminating their relationship with respondent, the Drings hired him to represent them in a real estate matter. The matter involved the sale of the Drings' house, but was complicated by the presence of a tenant on the property. On October 27, 1987, respondent represented the Drings at the settlement. During his testimony before the Special Master, respondent admitted that he was intoxicated at that time.

Approximately seven to ten days later, respondent appeared with the Drings in municipal court on a trespass charge against the tenant. Mrs. Dring testified before the Special Master that respondent "reeked of booze" at that time (T4/28/92 37). Mrs. Dring also testified that, during the five-year period that respondent represented her and her husband, it was "virtually impossible" to contact him by telephone (T4/28/92 41). The Special Master found that respondent violated RPC 1.1(a), RPC 1.3, RPC 3.2 (failure to expedite litigation),[2] RPC 1.4(a), RPC 8.4(c) and RPC 1.1(b), when this matter was considered in concert with those discussed infra.

The Hinkle Matter

On May 10, 1984, William Hinkle suffered a broken neck and separated shoulder in a motor vehicle accident.[3] Within one month

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[2] Violation of this RPC was not charged in the complaint, which was not amended to include such a charge. However, given its similarity to the charges set forth in the complaint, the Board deems the finding appropriate.

[3] Mr. Hinkle died of cancer on March 15, 1991. His widow, Gladys Hinkle, testified before the Special Master.

of the accident, Hinkle retained respondent to represent him.[4] By July of that year, respondent had filed a complaint against the driver of the other vehicle and against a tavern. Respondent failed to comply with discovery requests and there was a series of orders of dismissal.[5] Respondent filed a new complaint in May 1986, but failed to make service. Ultimately, the complaint was dismissed for lack of prosecution on August 5, 1988. The statute of limitations expired.

Mrs. Hinkle testified that, in approximately June 1989, after her husband was diagnosed with cancer, she and her husband met with respondent to discuss the progress made in the case. Respondent did not apprise the Hinkles that the case had been dismissed. According to Mrs. Hinkle's testimony, respondent stated: "give me a couple weeks and I'll see what I can do, and if I can't get it on the docket at that time I'll give you the file and you can find another attorney" (T4/28/92 85).[6] Mrs. Hinkle also testified to the difficulty attendant to communicating with respondent, who was never at his office and failed to return her calls.

The Special Master determined that respondent violated RPC 1.1(a), RPC 1.3, RPC 3.2, RPC 1.4(a) and RPC 1.1(b).

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[4] Respondent had previously represented Hinkle, in 1982, in another personal injury matter that was settled, apparently to Hinkle's satisfaction (T4/28/92 69-70).

[5] Respondent also failed to comply with an order, dated July 12, 1985, to produce medical authorizations (Exhibit CH-7).

[6] While respondent's silence regarding the status of the case at that time may be deemed a misrepresentation to the Hinkles, it is not clear from the record if his statement that he would attempt to have the case "docketed" was also a misrepresentation.

The Powers Matter

Richard and Jean Powers retained respondent to represent them in a real estate transaction. Respondent served as the closing attorney at a settlement held on December 11, 1987. Respondent failed to complete his responsibilities as closing attorney, in that he did not issue checks to pay certain closing expenses and did not forward documents to be recorded. Nevertheless, during repeated telephone conversations with Mr. Powers, respondent informed him that he had, in fact, mailed all of the checks to the parties.

By letter dated March 1, 1988, the title company involved in the transaction contacted the Office of Attorney Ethics (OAE) for assistance. On March 18, 1988, what essentially amounted to a second closing was held and respondent made the proper disbursements and forwarded the necessary documents for recording.

During the second settlement, Mr. Powers made two payments totaling $699.17. These payments were duplicative of untimely payments made by respondent. A refund of those payments was sent to respondent, who deposited the monies in his trust account. The funds, however, were not sent to Mr. Powers until March 13, 1992, over four years later, and only after the OAE brought the matter to respondent's attention. On March 16, 1992, respondent gave Mr. Powers $416.46, representing the $350 counsel fee he had been charged at the original settlement plus interest.

The Special Master determined that respondent violated RPC 1.1(a), RPC 1.3 and RPC 1.1(b).

The Bedics and Bradford Matters

Respondent handled two personal injury matters in which he retained funds in his trust account that were intended for the payment of medical expenses.

In the Bedics matter, after disbursing funds on October 24, 1986, respondent retained $2,173 to cover various medical bills. In the Bradford matter, respondent disbursed funds on October 20, 1987, retaining $500 for medical bills. On March 12, 1992, respondent disbursed the retained funds, but only after the involvement of the OAE.

The complaint alleged that respondent withheld the funds, hoping that the medical providers would forget about the payment due them or that the statute of limitations would run. The funds could then be returned to respondent's clients. Samuel Gerard, Auditor-in-Charge of the Random Audit Program of the OAE, testified before the Special Master. Gerard recalled a conversation with respondent regarding the Bedics matter, during which respondent stated that he had retained the funds in that matter, because, should the doctor forget about the monies owed to him, they could be returned to respondent's client (T4/29/92 10, 25-26).

With regard to the Bedics matter, respondent testified that a period of time had gone by without his receiving a bill from the doctor. Respondent did not want to disburse the funds to his client, then receive a bill, and have to instruct his client to pay the doctor, his fear being that his client would no longer have the

funds; when respondent did not hear from the doctor, he was unaware of whether the insurance carrier had paid the doctor's bill. Accordingly, he kept the funds in trust. Respondent added that the statute of limitations might have run or the doctor might have decided not to pursue the bill (T4/30/93 145-146).

The Special Master determined that respondent failed to follow through and complete settlement in these two personal injury matters, by not determining which expenses would be covered by insurance and by allowing the funds to remain in his trust account for four and one-half to five and one-half years. The Special Master further noted that the payments were made only after inquiry by the OAE.

The Special Master found that respondent violated RPC 1.1(a), RPC 1.3 and RPC 1.1(b). The Special Master, however, did not find sufficient evidence to support a violation of RPC 8.4(b) or (c).

The Simon Matter[7]

Michael Simon retained respondent to represent him in a DWI charge. Respondent, in turn, hired Stanley Broskey as an expert witness on Simon's behalf.[8] There was neither a written retainer agreement in the DWI matter, nor a document setting forth Broskey's fee. The testimony of the parties as to their verbal agreement was

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[7] Although this case is mentioned in the complaint and by the Special Master as the Simon matter, the grievant was actually Broskey.

[8] Broskey had worked with respondent on six to ten matters, prior to the Simon case. Broskey testified that respondent had always promptly paid him in those earlier matters (T4/28/92 127-128).

conflicting. Allegedly, respondent failed to pay Broskey, even though Simon had provided the funds for him to do so.

According to Simon's testimony, he gave respondent five checks between March 1987 and March 1988, totaling $2,630, for both a municipal court proceeding and an appeal; it was Simon's understanding that the first three checks, totaling $1,700, represented a $1,200 counsel fee and $500 for the expert. This notwithstanding, respondent did not pay Broskey's expert fee. Broskey testified that, during a conversation with respondent regarding the former's fee, respondent stated that Simon had "stiffed" him and that, therefore, respondent had "stiffed" Broskey (T4/28/92 135). Believing respondent, Broskey sued Simon for his fee (T4/28/92 136).[9] In his defense, Simon produced the checks for the first three payments to respondent, convincing Broskey that the payments included his fee. Broskey then filed suit against respondent, obtaining a consent judgment for $694.60. On May 1, 1989, Broskey adjusted the amount to $440 plus costs, to reflect a $250 payment made by respondent in connection with another matter in which Broskey was unable to appear (T4/28/92 142-143). Respondent failed to pay the judgment until March 16, 1992.

Although Simon insisted that the full amount of Broskey's fee was included in the sum he had paid to respondent, Simon admitted that he had failed to pay an additional $650 charged by respondent. It was respondent's testimony that the $650 represented the funds owed to Broskey.

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[9] Although Broskey subpoenaed respondent in the suit, he failed to appear.

The Special Master found that respondent failed to resolve the dispute over the witness fee in a timely fashion. Although the Special Master determined that it was unclear where the liability rested in this matter, he noted that respondent had hired Broskey and that he failed to appear in court in response to Broskey's subpoena, leaving Simon to defend himself. While there was no finding of fraud on the part of respondent, the Special Master did find that respondent violated RPC 1.3 and RPC 1.1(b).

Recordkeeping Violations

Respondent was charged with failure to properly maintain trust and business account records, in violation of R.1:21-6 and RPC 1.15.[10] Respondent admitted this violation, conceding that he did not maintain client ledger cards, failed to maintain a receipts journal for both his trust and business accounts, failed to maintain a running balance in his trust account disbursement ledger, and failed to retain deposit slips for his trust and business accounts.

In addition, under this count of the complaint, respondent was charged with retaining $66.46 that had been earned as interest on his client's funds in the Powers matter. Respondent admitted that he retained the funds and that he was aware that the accrued interest was not his property. During the hearing before the Special Master, the following exchange took place:

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[10] The second and third paragraphs of this count charged respondent with commingling and misappropriating trust funds. These charges were dismissed during the hearing.

> Q. The fourth Count of the ethics complaint says that you kept $66.46 in interest on the Richard Powers' matter. Do you recall keeping that interest?
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> A. No. I don't recall keeping it, but I probably did. The deal was I had $14,000 and I had to get the $14,000 to somebody else, and I got the $14,000 to them. It was the same $14,000. And it may have been that I was afraid to give the $1466 [sic]. I don't know because it wouldn't comport with what he gave me.
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> [T4/30/92 123-124]

Later in the hearing, respondent testified as follows:

> Q. Directing your attention to the Sixth Count and the $66.46 interest, at the time that this incident occurred when you transferred the money, the $14,000 out of the one account with Trenton Savings Fund back into your trust account were you aware that it is improper for an attorney to retain interest that was earned in such a situation?
>
> A. Sure.
>
> Q. Were you unaware or aware?
>
> A. I was aware of that.
>
> Q. You were aware?
>
> A. Yeah.
>
> Q. Well, what's your explanation for retaining the $66.46?
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> A. I just wasn't thinking and functioning correctly.
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> [T4/30/92 154-155]

The Special Master found that respondent was not in compliance with the recordkeeping requirements and misappropriated $66.46 in interest. Accordingly, there was a finding of violations of R.1:21-6, RPC 1.15(d) and, due to the misappropriation, RPC 1.15(a) and RPC 8.4(b) and (c).[11]

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[11] According to the complaint, the $14,000 was placed in respondent's account in December 1987. The money, not including the $66.46 in question, was turned over when Powers retained new counsel. Since the second closing was held

Additional Matters Not Charged in the Complaint [12]

During the hearing, respondent made the Special Master aware of six additional cases where he had failed to adequately represent his clients. Each involved cases that were or should have been in litigation and, due to respondent's neglect were dismissed or were precluded from being brought forth because of the expiration of the statute of limitations. The cases were not investigated by the OAE and were not the subject of formal charges against respondent. They are as follows:

1. Chiacchio -- Settled with respondent's malpractice carrier for $24,000.

2. Kaciauba -- Judgment against respondent for $14,000 without malpractice insurance.

3. Dorfner -- Settled with respondent's malpractice carrier for approximately $16,000.

4. Tate -- Pending, as of the date of the ethics hearing, as a malpractice action with a probable value of $40,000.

5. Ratcliff -- Pending, as of the date of the ethics hearing, as a malpractice action with a probable value of $20,000.

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on March 18, 1988, the funds were turned over prior to that date and, therefore, prior to the Court's warning about interest money issued in In re Goldstein, 116 N.J. 1 (1989). See discussion infra.

[12] The Special Master's report indicated that, during a discussion off the record, it was decided that these additional cases would not be made the subject of a separate or amended complaint but, rather, would be considered at that time. The Special Master determined that the additional cases would be placed in the record and that he would or would not refer to them in his report. The presenter, Thomas J. McCormick, added that he had encouraged respondent's counsel to be as candid as possible during his direct examination of respondent (T4/30/92 112-113).

6. Smith -- Relates to a defective van. No specific value was provided, but it was considered relatively small in comparison to the other matters.[13]

The Special Master found a violation of RPC 1.3[14] and RPC 1.1(b).

* * *

Respondent's testimony before the Special Master focused on his alcoholism and his efforts to overcome it. He candidly admitted that he had neglected the within matters and expressed remorse for his conduct. He testified that he has not consumed alcohol for three years and that he works to assist other alcoholics overcome their addiction. Respondent explained that he is currently in practice with another attorney and that approximately ninety percent of his practice is limited to criminal and municipal court cases. He handles no estate or complex personal injury matters. Respondent's partner is responsible for all of the recordkeeping in the firm (T4/30/92 87-89). Respondent testified that he believes that he is capable of practicing at this time and that his current clients are likely to benefit from his experience (T4/30/92 126).

In addition to considering respondent's testimony regarding his alcoholism, the Special Master heard from respondent's alcohol counselor, Maureen Tablas, and his psychiatrist, Terrence

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[13] This matter is the subject of a pending ethics grievance.

[14] The Special Master's report erroneously refers to a violation of RPC 1.13.

Chamberlain. The former testified as to respondent's condition prior to treatment and his decision to obtain treatment; the latter testified as to respondent's therapy after completing in-patient treatment at Keystone Center.[15] Dr. Chamberlain testified that it is his belief that respondent has been alcohol-free since completing his treatment (T4/30/92 64), but opined that respondent is in need of additional therapy.[16] According to Dr. Chamberlain's testimony, respondent had adopted avoidant behavior as a part of his alcoholism. Dr. Chamberlain explained that the individual avoids what he or she does not like by drinking and that respondent is not fully recovered from that behavior (T4/30/92 57, 62, 64). With regard to whether respondent is currently capable of practicing law, Dr. Chamberlain testified that, although respondent is continuing his avoidant behavior, it was not significantly affecting his law practice (T4/30/92 66). Dr. Chamberlain added that the fact that respondent has continued his avoidant behavior is "very troubling." He noted that it is possible that respondent's remorse may be causing it (T4/30/92 67-68).

With regard to his avoidant behavior, respondent testified as follows:

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[15] Respondent entered Keystone in March 1989, where he remained for twenty-eight days.

[16] At the end of the hearing before the Special Master, respondent was asked if he was "going to give consideration in [sic] seeking assistance from Dr. Chamberlain." Respondent answered in the affirmative (T4/30/92 161).

> When I came out of Keystone I was looking forward to getting sued by the Dring's [sic], getting sued by the Hinkle's [sic], getting sued by the Chiacchio's [sic], getting sued by God knows who. And you know, I probably -- when Dr. Chamberlain said today about me and avoidance, I've tried to address these matters, you know, as a human being one at a time as they pop up. And you know, if ten pop up I can't hit all ten of them immediately.
>
> But I have never denied my responsibility to any of these people. I may not have reacted quickly enough, but you know, frankly gentleman [sic] there was a whole lot to react to and it couldn't be done.
>
> [T4/30/92 111].

As to his failure to respond to letters from the DEC secretary requesting responses to grievances filed against him, respondent explained:

> I can only say that I was, you know, apparently still being overwhelmed with these things. You know Mr. McCormick, I'm pretty sure at that point in time I was addressing certain of these things and hoping and praying, let's get this one solved and this one solved and then we'll get to that one.
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> And I understand it's not my place to tell you or Mr. Vetra, you know, hold off on this because I'm busy on this that I screwed up before and I want the [sic] get this wrapped up, which is what I should have done. I probably should have walked in to you or Mr. Vetra or somebody and say look, you got one of those. There's other [sic] one out there here's all of them. Can I take them one at a time. That's what I should have done.
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> [T4/30/92 136].

Respondent went on to explain the action that he would take, should these matters arise in the future. He testified that he does not want any other clients harmed by his action or inaction and that he did not wish to tie up the OAE or anyone else "needlessly" policing him. Respondent understood the continued concern about his inaction and expressed his intention to make certain that he would not "have to go through anything like this again." He added that he believes that, over the last two years,

he has generally been accomplishing things promptly (T4/30/92 136-139). Respondent admitted that he has had a "block" concerning pre-1989 matters (T4/30/92 143).

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the Special Master's conclusion that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Respondent is guilty of myriad violations of the Rules of Professional Conduct, and the Court Rules governing recordkeeping.[17] The level of discipline imposed for violations similar to respondent's has varied significantly. See In re Marlowe, 121 N.J. 236 (1990) (three-month suspension for a pattern of neglect in two cases, misrepresention of the status of the matters, failure to communicate with his clients and failure to cooperate with the disciplinary authorities); In re Martin, 118 N.J. 239 (1990) (six-month suspension for exhibiting a pattern of neglect in seven matters, failing to communicate with clients and,

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[17] In the Powers matter, respondent retained $66.46 that had been earned as interest on funds he was holding on behalf of his client. Advisory Opinion No. 326, relating to investing client property, states that "it must be clearly understood that any interest or accretion is the property of the client." See In re Goldstein, 116 N.J. 1 (1989) (where an attorney who maintained an interest-bearing trust account withdrew, between 1982 and 1986, $25,000 in interest monies and deposited it in either his business account or in a money market account. He contended that he was unaware of Opinion No. 326. The Court imposed a public reprimand, but issued a warning to the bar that, in the future, similar misconduct would be met with harsher discipline.

As noted above, respondent's misconduct in this regard occurred prior to the Court's warning in Goldstein. Accordingly, the harsher discipline to which the Court alluded in that case is not mandated for this particular violation in this matter. See, also, In re Sorensen, 122 N.J. 589 (1991).

in two instances, settling cases without his clients' consent or knowledge); In re George, ___ N.J. ___ (1989) (one-year suspension, followed by a one-year proctorship, for engaging in a pattern of neglect and gross neglect in four matters, improperly taking an acknowledgment and failing to maintain proper trust and business account records. As an aggravating factor, the Court considered the attorney's failure to cooperate with the disciplinary authorities); and In re Rosenthal, 118 N.J. 454 (1990) (one-year suspension for a pattern of neglect in three matters, misrepresentations to and failure to communicate adequately with clients and failure to cooperate with the disciplinary authorities).

As noted above, testimony was offered before the Special Master as to respondent's battle with alcoholism. The Court has previously recognized alcoholism as a factor in a disciplinary proceeding. In In re Willis, 114 N.J. 42 (1989),[18] the Court stated:

> [i]n another context, we have recognized that alcoholism is a handicap and a disease. Cloves v. Terminix Int'l, Inc., 109 N.J. 575, 590-95 (1988). Thus, we are confronted with an apparent dilemma between our commitment to maintain public confidence in the bar and our belief that alcoholism can drastically affect the conduct of people, including lawyers. As this case illustrates, alcoholic lawyers are a threat not just to themselves, but to the clients who rely on them. We believe we best serve the public and the bar by rendering a decision that encourages lawyers to seek help to avoid

[18] In Willis, the attorney was suspended for six months after conviction of willful failure to file an income tax return. In addition, Willis was guilty of gross neglect in six matters, misrepresentation to one client by knowingly issuing a check on insufficient funds and a pattern of overreaching in eight matters.

> inflicting continuing harm on their clients. With respect to alcoholic lawyers, the public may be best protected by a policy that encourages those lawyers to seek rehabilitation at the earliest possible moment. Such a policy would not only start afflicted lawyers on the road to recovery, but would contain the harm that they can inflict on their clients. We state that proposition tentatively and with the awareness that we have much to learn about chemical addiction, including alcoholism.
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> [Id. at 49]

Although psychological difficulties do not excuse misconduct, such difficulties may be considered in mitigation, if proven to be causally connected to the attorney's unethical actions. In In re Templeton, 99 N.J. 365 (1985), the Court held:

> In all disciplinary cases, we have felt constrained as a matter of fairness to the public, to the charged attorney, and to the justice system, to search diligently for some credible reason other than professional and personal immorality that could serve to explain and perhaps extenuate, egregious misconduct. We have always permitted a charged attorney to show, if at all possible, that the root of transgressions is not intractable dishonesty, venality, immorality or incompetence. We generally acknowledge the possibility that the determinative cause of wrongdoing might be some mental, emotional, or psychological state or medical condition that is not obvious and, if present, could be corrected through treatment.
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> [Id. at 373-4]

The Board is of the opinion that respondent has proven a causal link between his alcoholism and the within acts of misconduct. Nevertheless, although respondent's psychological problems may mitigate the severity of discipline imposed, they do not excuse him from his repeated displays of unethical conduct. Respondent is guilty of numerous acts of misconduct that, combined

majority regarding the imposition of a proctorship. One member did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 12/3/92 By: Raymond R. Trombadore

Raymond R. Trombadore
Chair
Disciplinary Review Board